IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO:L.P.A.No.291 of 2003

DATE OF DECISION:February 12, 2007

RAJINDER PARKASH SETH

.....APPELLANT
through Mr. R.P.S.AHLUWALIA,
Advocate

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS
through Mr. B.S.RANA,
ADDL. A.G., HARYANA

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUTICE
HON'BLE MR. JUSTICE RAJIVE BHALLA.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**

2. **To be referred to the Reporters or not?**

3. **Whether the judgment should be reported in the Digest?**

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

The appellant after passing his matriculation examination, joined the Police Force as a Selection Grade Constable at Faridkot, in the State of PEPSU on 2.1.1951. He passed the Lower School Course in August 1954 and was promoted as Head Constable on 1.6.1957. On 11.04.1960, he was brought on promotion list 'D' and promoted as officiating A.S.I. on 1.12.1961. On 31.03.1962 he was sent to Intermediate Course at Police Training School, Phillaur. Thereafter, he was allowed to cross the efficiency bar and was confirmed as ASI with effect from 17.1.1975 and further confirmed as SI from 10.05.1980 vide order dated

1.8.1983. During this period he earned a large number of commendation certificates and cash rewards for his good work. He received a notice dated 10.2.1983 requiring him to show cause why he be not compulsorily retired in terms of Punjab Police Rule 9.18 (2) as applicable to the State of Haryana. The appellant submitted his reply to the aforesaid notice, but vide order dated 12.08.1985 he was served with a notice. On expiry whereof, it was ordered that he would be deemed to have been retired from service. The appellant, impugned the order of compulsorily retirement. Vide the impugned order dated 11.02.1003, the writ petition was dismissed.

Mr. Ahluwalia, learned counsel for the appellant contends that while dismissing the writ petition, the learned Single Judge relied upon adverse entries for the year 1983-1984, thus, vitiating the impugned order. As these entries, came into existence after issuance of the alleged show cause notice, they could not be considered. It is further contended that the appellant ought to have been granted an opportunity of being heard before the order of compulsorily retirement was passed. In support of his contention, learned counsel for the appellant has relied upon a Division Bench judgment of this Court reported as **A.S.I. Harinder Singh v. State of Haryana**,**1995 (3) P.L.R., 540.** Another contention raised by the learned counsel for the appellant is that the order of compulsory retirement, has been passed without taking re-course to the safeguard provided under the Punjab Police Rules. Rule 9.18(Note 2) which is to the following effect:

> "**NOTE 2:-** The officer shall be given an adequate opportunity of making any representation that he may desire to make against the proposed action and such representation shall be taken into consideration before his compulsory retirement is ordered. In all cases of compulsory retirement of enrolled police officers, the

Inspector-General of police shall effect such retirement only with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time."

It is further contended that the appellant was promoted as ASI in the year 1974, thereafter to the post of the S.I. in the year 1980 and, therefore, the adverse entries, in the ACRs prior to 1974 and 1980, could not have been taken into consideration while compulsorily retiring the appellant. It was also urged by the learned counsel for the appellant that without holding a departmental enquiry, no adverse opinion could be formulated, to compulsorily retire the appellant from service. In support of his contention, learned counsel for the appellant has relied upon a judgment titled as **A.S.I. Radhey Shyam v. State of Haryana and others, 2001(3) S.L.R., 18.**

Counsel for the State of Haryana, however, states that the impugned order does not suffer from any error of law and as such it does not require interference. It is contended that a show cause notice was issued to the appellant. His reply was duly considered and thereafter an order of compulsory retirement was passed. It is contended that the authority concerned, perused the entire service record and arrived at a conclusion that the appellant should be compulsorily retired. The conclusion of the authority is neither arbitrary, nor perverse and is based upon material before the authority. It is contended that as compulsory retirement is not a punishment, no enquiry was required to be held. It is further argued that the learned Single Judge merely made a reference to the adverse entries for the years 1983-1984.

We have heard the arguments advanced by both the parties at length and perused the record.

It is no longer res-integra that compulsory retirement is not a punishment. In public interest and in the interest of administration, dead wood may and should be severed. For arriving at a conclusion whether an employee should be compulsorily retired his entire service record has to be taken into consideration. The principles of law that govern an order of compulsory retirement and the manner of judicial scrutiny, have been set down by the Hon'ble Supreme Court in **Baikuntha Nath Das and another v. Chief District Medical Officer,Baripada and another,1992(2) SLR 2** . The principles as set down by the Hon'ble Supreme Court reads as follows:-

> "**32.** The following principles emerge from the above discussion:
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> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
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> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
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> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no

evidence or (c) that it is arbitrary-in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 above

The order of learned Single Judge and also the order of compulsorily retirement would have to be examined in the light of the principles, set down in the judgment titled as **Baikuntha Nath Das and**

another v. Chief District Medical Officer,Baripada and another (supra) reproduced herein above.

The appellant was served with a Show Cause Notice dated 12.08.1985, proposing to retire him compulsorily. He filed a reply thereto and upon an appraisal thereof and also his entire service record, the order compulsorily retiring him from service came to be passed on 12.08.1985. The first contention, raised by counsel for the appellant that no show cause notice was served, in terms of Note-2 Rule 9.18 is factually incorrect. After due consideration of the reply filed by the appellant, the respondents passed the following order:-

> "In view of approval for compulsory retirement under Rule 9.18(2) received from Financial Commissioner, Secy. to Govt. (B) Home Department letter No.11/18/85-3/HC-2, dated 12.07.1985 conveyed through the Inspector General of Police, Haryana and the Deputy Inspector General of Police, Gurgaon Range, Gurgaon vide his endst. No.12613/A-1 dated 3.8.85, you S.I.Rajinder Parkash No.55/H is hereby served with a notice of 90 days for retirement. On expiry of this notice having received by you, you will be deemed to have been retired from service."

Another contention, that adverse entries, that came to be recorded between the service of the show cause notice and passing the order of compulsory retirement were taken into consideration, is not borne out from the record and, therefore, cannot be accepted. Even otherwise no such plea was raised whether in the writ petition or urged before the learned Single Judge Another submission put-forth, that the learned Single Judge considered the adverse entries for the years 1984-1985, while examining the appellant's record, merits rejection. The learned Single

Judge merely referred to these entries in passing and did not uphold the order on the basis of these entries. The last contention that the crossing of efficiency bar and the promotions granted, would wipe out the effect of the adverse entries cannot be accepted. While considering a case of compulsory retirement the entire service record has to be perused. The authority concerned, after complying with the provisions of Rule 9.18(2), and after an appraisal of the reply filed by the appellant arrived at a conclusion that the appellant should be compulsorily retired. The opinion formed, to compulsorily retire the appellant was recorded upon a subjective appraisal of the service record. The order does not suffer from the vice of malafide and is in no manner arbitrary. It is based upon sufficient and cogent material namely the appellant's service record. The learned Single Judge after examining the entire record and considering the arguments raised for and against the order of compulsory retirement, rightly dismissed the writ petition.

We find no infirmity in the impugned order passed by the learned Single Judge and as there is no merit in the appeal, the same is hereby dismissed, with no order as to costs.

(VIJENDER JAIN)
CHIEF JUSTICE

February 12, 2007
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(RAJIVE BHALLA)
JUDGE